

REMARKS

All claims remain pending in this application, though some have been amended to better define the invention.

With regard to the rejection under 35 U.S.C. §112, first paragraph, the Examiner is mischaracterizing Applicants' argument. Applicants are not stating that it would have been obvious to one of skill in the art to disclose new matter, but rather, that it would have been obvious to one of the skill in the art, including the instant inventors, that the claims currently pending find support in the specification and claims as originally filed. One has to look at the figures to realize that audio/video switching matrix can select among various inputs, and that "channels" are not limited to a particular medium. In this respect, Applicants rely on all of the arguments previously made of record.

Claims 18-19, 21, 34-35 and 37 stand rejected under 35 U.S.C. §102(b) over Olesen ('787). It is interesting that while the Examiner refuses to give Applicants a reasonable interpretation of the subject matter set forth in the instant application, the Examiner is willing to interpret references such as Olesen in a remarkably broad manner sufficient to read on apparatus and methods that could not possibly fall within the scope of such teachings. For example, the Examiner states that "*clearly*, the different TV transmission media providers in Olesen offer overlapping channels ... thus, Olesen *inherently* enables a customer for tune to a particular channel ..." (emphasis added). There is nothing clear or inherent about the statements by the Examiner, and it is well settled that, in order to anticipate, a prior-art reference must disclose each and every element of an invention as claimed. RCA Corp. v. Applied Digital Data Systems, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Claim 18 has been amended to make it further evident that "automatically" means switching from one transmission medium to another without viewer intervention at the time of the switch. Clearly, Olesen does not include any such limitation. With regard to claim 34, a limitation is included that the TV program includes a channel-change command. In rejecting claim 34, the Examiner says nothing about this limitation, because it does not exist in the Olesen reference. Given that the independent claims - 18 and 34 - distinguish over Olesen, the dependent claims currently under rejection are allowable as well.

Claims 20, 22, 36 and 38 stand rejected under 35 U.S.C. §103(a) over Olesen. Again, given that the independent claims distinguish over Olesen, Applicants believe that all dependent claims

distinguish as well. Nevertheless, the Examiner takes "official notice" that since certain things were available at the time of Olesen, it would have been obvious "to modify Olesen to use these features." However, the very fact that these technologies were available at the time of Olesen, teaches away from obviousness, since the Olesen reference itself is silent as to their availability or benefit. Presumably, if Olesen were one of skill in the art, it would have been obvious to Olesen to make mention of these aspects without the Examiner having to take "official notice." Moreover, it is inappropriate to take "official notice" at points of novelty in claims, even as part of an obviousness rejection. Rather, the Examiner must show why one of skill in the art would be led to modify a particular reference, rather than make a blanket statement that it would have been obvious *to the Examiner*.

Based upon the foregoing amendments and comments, Applicants believe all claims are in condition for allowance. As a final note, in rejecting claim 21, the Examiner states at the bottom of page 6 of the Office Action that "Reiter discloses ..." and yet, Applicants cannot see where Reiter is being used as a source of rejection. Accordingly, Applicants did not address the teachings of Reiter. Questions regarding this application may be directed to the undersigned attorney at the telephone/facsimile numbers provided. Attached is a version showing the changes made to the claims.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

18. (Thrice Amended) A method of automatically changing to an alternate transmission medium at a TV viewer location, comprising the steps of:

entering, at the viewer location, information regarding a viewing preference;

transmitting a TV program from a source [broadcaster] to a viewer location;

receiving the TV program at the viewer location over a first transmission medium; and

automatically switching the TV program to the alternate transmission medium based on the information previously entered by the viewer without requiring any additional viewer intervention at the time of the switching.